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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON D.C. 20590

DEPARTMENT OF TRANSPORTATION
98 NOV 18 AM 9:51
DOCKET SECTION

In Re:

DOCKET # 98-4775-1

ASSOCIATION OF RETAIL TRAVEL AGENTS
("ARTA")

Emergency Petition for Rulemaking

EMERGENCY PETITION FOR RULEMAKING
BY ASSOCIATION OF RETAIL TRAVEL AGENTS

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I. JURISDICTION.

This complaint is submitted pursuant to Sections 49 CFR 5.11 and 14 CRT 302.38 as an Emergency Petition for Rulemaking.

II. FACTUAL BACKGROUND.

The Association of Retail Travel Agents, (ARTA) was founded in 1963, and is the nation's largest nonprofit trade association open exclusively to travel agents. Its headquarters are located at 501 Darby Creek Road, Suite 47, Lexington, Kentucky 40509. ARTA does not admit suppliers or vendors or destination marketers as members. More than 4000 travel agents in all regions of the United States belong to ARTA today --and the great majority of members are "mom and pop" retailers who fit within the traditional federal definition of a small business (e.g., less than \$5 million in annual gross revenues). A significant percentage of ARTA travel agencies are owned and staffed by women and ethnic minorities.

On November 12, 1998, United Airlines announced that it would be dramatically reducing the commissions it paid to travel agents on international transportation. Commissions formerly computed at eight percent of the fare (having been

reduced from ten percent or more in 1997), on international transportation, would be "capped" at \$50 one way, or \$100 round trip. Thus, a round-trip business class ticket to Europe that sold for \$3500 on November 11th and upon which United paid the agent a commission of \$280.00 would now yield the agent only a \$100.00 commission.

Many agencies already crippled by last year's twenty percent cut in air commissions, will be unable to continue to issue air tickets for any profit given this latest commission cut by United. However, these agents still face onerous "productivity requirements" that were imposed when agents assumed that their air commission income relating to such tickets would be stable. Agents are now faced with having to pay monetary penalties indirectly to the airline owner(s) of the CRS systems because of commission cuts by those airline(s). Because the commission cuts render certain air ticket sales unprofitable, if the agent then elects not to sell that particular carrier that has cut the commissions and instead decides to expend its resources selling more profitable cruises and tours, the agent then experiences productivity booking shortfalls on its CRS agreement. These agreements customarily provide for the agent to pay the airline in the neighborhood of \$3.00 for each booking short of the level set forth in the contract. Or, alternatively, travel agent CRS subscribers are forced to continue

providing travel sales services to a particular carrier that they would not have otherwise provided, in the absence of the leverage exercised by that carrier through the productivity requirement in the agency's contract with a CRS in which the airline has ownership.

Despite high-profile announcements by all major CRS vendors that they operate independently of their airline owners, the fact remains that airlines continue to own and control all four major CRS vendors. SABRE, while publicly traded, remains principally owned by AMR Corporation, the parent company of American Airlines. The second largest system, APOLLO, is operated by Galileo International, also publicly traded, but largely owned by United Airlines, US Airways, Air Canada, and several European carriers. Worldspan is owned by Delta, Northwest, and TWA. Amadeus, a large European system that acquired SystemOne, (formerly controlled by Continental Airlines), is owned primarily by Lufthansa, Air France, Iberia, and Continental.

III. ARGUMENT

Because this latest drastic commission reduction by United imperils the very existence of travel agents throughout the United States, ARTA requests and moves the DOT to EXPEDITE ITS DECISION MAKING PROCESS AND IMPLEMENT ON

AN EMERGENCY BASIS ARTA'S specific recommendation on file in in Docket 49812 to permit agents by law to renegotiate the terms of their CRS Agreements or to submit them to arbitration, when an airline-CRS Vendor/owner materially changes the business conditions affecting the agency's operations.

ARTa has previously drawn to the DOT's attention this onerous, anticompetitive action by the individual airlines acting through their ownership in the major CRS systems. ARTa made this clear in its COMMENTS submitted to the DOT earlier this year, in **Docket 49812**. In ARTa's COMMENTS in that docket - the DOT's Advance Notice of Proposed Rulemaking for Computerized Reservations System (CRS) Regulations (14 CFR Part 255), ARTa urged that the DOT take six specific courses of action to regulate CRS competitive abuses. These included a specific recommendation to implement a rule compelling CRS vendors to renegotiate contracts or permit them to be submitted for arbitration, if a vendor airline owner substantially changed the business conditions affecting travel agency operations. ARTa's urgent arguments in Docket 49812 were prophetic, given United's action of November 12, 1998. We therefore reiterate them here:

4. Travel Agencies with subscriber contracts for CRS services should be given the right to re-negotiate the contracts, or submit them for arbitration, if a vendor's airline owner changes substantially the business conditions affecting the agencies' operations.

"While ARTA generally supports the concept of productivity pricing -it encourages an agency to make efficient use of its CRS equipment and to avoid obtaining more equipment than it reasonably needs to conduct business -ARTA questions the ability of carriers to make substantial, dramatic changes in [their] policies affecting travel agencies that in turn handicap the agencies' ability to meet productivity requirements set by [CRS] vendors in which those carriers own an interest.

"For example, the 20 percent reduction in agency commissions by the majority of U.S. carriers in 1997 forced many agencies to re-examine the economic efficiency of selling airline tickets, given their fixed operating and personnel costs associated with selling tickets that would bring in reduced revenues for the agencies. In turn, agency owners faced a dilemma: shift their sales efforts to other forms of travel (e.g., tours and cruises) while paying penalties to vendors for not meeting productivity requirements, or continue to sell airline tickets for

greatly reduced commissions in the hopes of meeting productivity requirements.

"ARTA proposes a rule permitting subscribers to re-negotiate the terms of their contracts, or to submit them to arbitration, if a carrier with an ownership interest in a vendor decides to change substantially the business conditions affecting the subscribers. The rule should specify a reasonably limited list of demonstrable changes that would trigger this oversight (e.g., any change in commission policies for agencies.)"

(ARTA's comments to DOT, John Hawks, President, Docket 49812, at pages 16-17)

* *

As it turns out prophetically, United has now taken the very action against which ARTA had sought regulatory protection from the DOT earlier this year.

United, as a significant owner of Galileo International which operates APOLLO, the second-largest CRS system in the United States, has essentially rendered COMMERCIALY IMPRACTICABLE the ability of its travel agent subscribers to perform their obligations under the APOLLO GALILEO CRS SUBSCRIBER SERVICES AGREEMENT. It has done so by materially altering fundamental business conditions which the travel


agent subscriber assumed would exist at the time the agent entered into the APOLLO productivity pricing agreement.

APOLLO's CRS productivity pricing contracts (1) require production of total target bookings and (2) do NOT authorize removal of one or more CRT's for a proportionate reduction in booking fees, if a travel agent subscriber's business declines. There is no "steam valve" to reasonably accommodate changed market conditions, not to mention conditions changed by the airline owners of APOLLO itself. The effect of a CRS vendor-owner airline materially reducing commissions to a subscribing travel agent with a productivity pricing contract, is to compel the travel agent to sell tickets that are unprofitable after the commission reduction, and which the agent would not otherwise sell, except for the LEVERAGE that the CRS vendor holds over the agent through the productivity booking quota. This serves to materially diminish COMPETITION in the airline industry. The travel agency cannot make a competitive, market-based decision whether or not to provide sales services to the airline. The agent is simply compelled to provide such services to the airline, because of the airline's leverage under the CRS productivity booking quota in airline-owned/controlled CRS contract.

IV. CONCLUSION.

ARTA urges the DOT to take emergency and expedited action based upon this November 12, 1998 commission cut by United Airlines, to implement the formal request already submitted by ARTA in Docket 49812, that 14 CFR Part 255 be specifically revised to include, *inter alia*, a Rule that travel agent CRS subscribers be given the right to renegotiate or submit for arbitration a CRS contract if an airline having an ownership interest in that CRS vendor substantially changes the business conditions affecting the agency's operations, specifically including, but not limited to, material travel agent commission reductions.

Dated: November 17, 1998

A large, stylized handwritten signature in black ink, appearing to read 'Alexander Anolik', is written over a horizontal line. A long, sweeping vertical stroke extends downwards from the right side of the signature.

ALEXANDER ANOLIK
Counsel for
ASSOCIATION OF RETAIL TRAVEL AGENTS

CERTIFICATE OF SERVICE

I, Wayne Caldwell, an attorney licensed to practice in the State of California, hereby certify that my business address is 693 Sutter Street, Sixth Floor, San Francisco, California 94102, and that on November 17, 1998, I served a copy of the within EMERGENCY PETITION FOR RULEMAKING by Federal Express, Standard Overnight Delivery, addressed as follows:

Legal Department
APOLLO GALILEO USA PARTNERSHIP
9700 West Higgins Road, Suite 400
Rosemont, Illinois 60018

Legal Department
SABRE TRAVEL INFORMATION NETWORK
4200 American Boulevard
Fort Worth, Texas 76155

Legal Department
WORLDSPAN
300 Galleria Parkway, N. W.
Atlanta, Georgia 30339

Legal Department
SYSTEM ONE AMADEUS
9250 N. W. 36th Street
Miami, Florida 33178

A handwritten signature in black ink, appearing to read "Wayne Caldwell", written in a cursive style.

WAYNE, CALDWELL